SUPREME COURT EXTENDS RULING ON FREE COUNSEL: Holds States Must ...
By ANTHONY J. LEWIS Special to THE NEW YORK TIMES.
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SUPREME COURT EXTENDS RULING ON FREE COUNSEL

Holds States Must Provide Lawyers for All Poor in Serious Criminal Cases

REVERSES 1942 DECISION

Unanimous Opinion Could Permit Many Now Jailed to Ask New Trials

By ANTHONY J. LEWIS
Special to The New York Times.

WASHINGTON, March 18—The Supreme Court held today that the states must supply free lawyers to all poor persons facing serious criminal charges.

The court unanimously overruled its own 1942 decision in the landmark case of Betts v. Brady. There the ruling was that the Constitution required appointed counsel only in cases involving a death sentence or "special circumstances," such as an illiterate defendant.

Justice Hugo L. Black, who dissented in 1942, wrote the opinion for the majority today. He said Betts v. Brady was incorrectly decided.

"Reason and reflection," Justice Black said, "require us to recognize that in our adversary system of criminal justice any person haled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."

Florida Case Involved

The decision, one of the most important ever made by the Supreme Court in the criminal law field, was provoked by Clarence Earl Gideon, a 52-year-old inmate of the Florida State Prison.

Gideon was convicted of breaking and entering the Bay Harbor Poolroom in Panama City, Fla., with intent to commit petty larceny. He asked for a lawyer at his trial but was turned down.

The Florida Supreme Court rejected a habeas corpus petition from Gideon. He then sent a hand-written petition to the United States Supreme Court, which agreed to hear the case and to reconsider the correctness of Betts v. Brady.

At present only five states

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Supreme Court Rules States Must Provide Free Counsel

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have no regular provision for appointment of counsel except in capital cases—those with possible death sentences. These states are Florida, Alabama, Mississippi and North and South Carolina.

In a number of other states, however, appointing practices vary according to localities, with no regular provision in less populous areas for non-capital cases. And quite a few states do not provide counsel in misdemeanors or petty offenses.

Many Could Ask Release

Thus today's decision could have a great impact across the country. Among other things it could permit many thousands of persons now in prison to demand new trials.

Justice Black's opinion did not say whether the new constitutional doctrine was to be applied to those already jailed. But there was nothing to indicate that others in Gideon's position could not seek their release on habeas corpus as he did, because he had no lawyer at his trial.

Florida estimated, in this case, that perhaps 5,000 prisoners in her jails had had no lawyers at their trials and might ask for release. The state made this a strong ground for pleading with the court not to overturn Betts v. Brady.

One restriction on the effect of the decision may be the doctrine of waiver—the rule that a man may waive his right to a lawyer by not demanding one. Gideon specifically asked for a lawyer at this trial, but many prisoners may not have done so.

Justice Black's opinion did not settle, either, whether the new rule will apply to the most petty crimes, such as traffic offenses. That will presumably be worked out in later cases.

'Respectful Burial'

Justice John Marshall Harlan, in a concurring opinion, said he agreed that Betts v. Brady should be overruled but thought it deserved "a more respectful burial" than Justice Black's opinion saying it was wrong to start with.

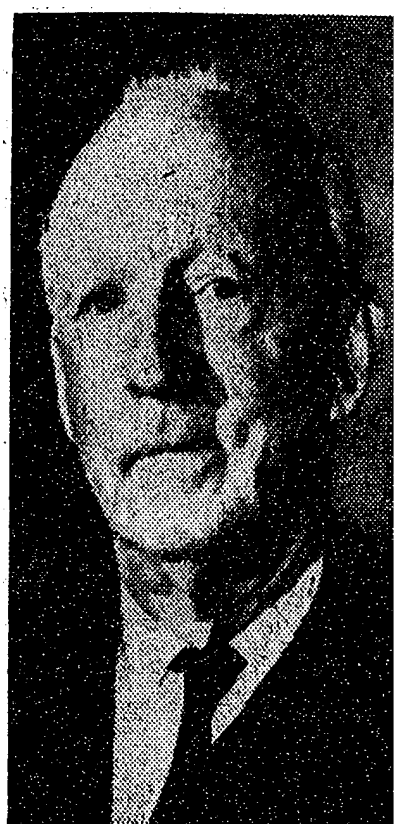
Justice Harlan was persuaded by the fact that the Supreme Court in recent years had repeatedly found "special circumstances" requiring counsel. He said that "to continue a rule which is honored by this court only with lip service is not a healthy thing."

Justice Tom C. Clark also filed a separate concurrence, based on his conclusion that the Constitution made no distinction between capital and non-capital crimes.

In several other cases today the court took major steps to provide new protections for state criminal defendants.

It held, 6 to 3, that when a state provides a right to appeal criminal convictions, it must supply counsel on appeal for indigents. The dissenters were Justices Harlan, Clark and Potter Stewart.

The Justices divided 5 to 4 in deciding that Washington State had not given two prisoners an adequate record of their trial as a basis for appeal. Justice Byron White wrote the dissent, joined by Justices Harlan, Clark and Stewart.



Associated Press

Justice Hugo L. Black

A unanimous decision struck down an Indiana procedure under which the public defender might prevent a poor man from appealing by declaring the appeal frivolous.

By a vote of 6 to 3, with Justices Harlan, Clark and Stewart dissenting, the court held that Federal courts may release on habeas corpus a state prisoner who was turned down in the state courts because he failed to follow required procedure.

This case, which has great significance for the relations of state and Federal courts, involved Charles Noia of New York, serving a life sentence for murder.

Two co-defendants of Noia's were eventually released because confessions were found to have been coerced from all three. But Noia had never appealed — because, he said, he feared a death sentence in a new trial.

The New York courts said this failure to appeal barred any relief for him after his two co-defendants went free. The Supreme Court said today that, whatever restricted the New York judiciary, Federal courts could and should free Noia.

Finally, by a vote of 5 to 4, the court said an Indiana prisoner should have a full hearing before a Federal court on his assertion that he had confessed after he was given a "truth serum" drug.

The dissenters—Justices Stewart, Harlan, Clark and White—agreed that a confession obtained by drugs would be invalid. But they said the prisoner had had ample chance to prove his claim in the state criminal proceedings, failed and should not be given a new chance in the Federal courts.

This barrage of criminal law decisions, especially the Gideon case, should spur state efforts to set up new methods of providing counsel for indigents.

Attorney General Robert Kennedy has asked Congress for comprehensive legislation to provide counsel and other services for the poor in Federal courts. Since 1938 they have

makes them obligatory on the states. Explicitly recognized to be of this "fundamental nature" and therefore made immune from state invasion by the 14th Amendment, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances. For the same reason, though not always in precisely the same terminology, the court has made obligatory on the states the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment. On the other hand, this court in Palko v. Connecticut, 302 U.S. 319 (1937), refused to hold that the 14th Amendment made the double jeopardy provision of the Fifth Amendment obligatory on the states. In so refusing, however, the court, speaking through Mr. Justice Cardozo, was careful to emphasize that "immunities that are valid as against the Federal Government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the 14th Amendment, become valid as against the states" and that guarantees "in their origin effective against the Federal Government alone" had by prior cases "been taken over from the earlier articles of the Federal Bill of Rights and brought within the 14th Amendment by a process of absorption." 302 U. S., at 324-325, 326.

We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the states by the 14th Amendment. We think the court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before Betts v. Brady, this court, after full consideration of all the historical data examined in Betts, had unequivocally declared that "the right to the aid of counsel is of this fundamental character." Powell v. Alabama, 287 U.S. 45, 68 (1932). While the court at the close of its Powell opinion did by its language, as this court frequently does, limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable. Several years later, in 1936, the court reemphasized what it had said about the fundamental nature of the right to counsel in this language:

> "We concluded that certain fundamental rights, safeguarded by the first eight amendments against Federal action, were also safeguarded against state action by the due process clause of the 14th Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution." Grosjean v. American Press Co., 297 U.S. 233, 243-244 (1936).

And again in 1938 this court said:

> [The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not 'still be done.'" Johnson v. Zerbst, 304 U. S. 458, 462 (1938). To the same effect, see Avery v. Alabama, 308 U.S. 444 (1940), and Smith v. O'Grady, 312 U.S. 329 (1941).

In light of these and many other prior decisions of this court, it is not surprising that the Betts court, when faced with the contention that "one charged with crime, who is unable to obtain counsel, must be furnished counsel by the state," conceded that "expressions in the opinions of this court lend color to the argument." 316 U.S., at 462-463. The fact is that in deciding as it did that" appointment of counsel is not a fundamental right, essential to a fair trial" the court in Beets v. Brady made an abrupt break with its own well-considered precedents. In returning to these old precedents, sounder we believe that the new, we but restore constitutional principles established to achieve a fair system of justice. Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and Federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenes. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national Constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in Powell v. Alabama:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissable. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." 287 U. S., at 68-69.

The court in Betts v. Brady departed from the sound wisdom upon which the court's holding in Powell v. Alabama rested. Florida, supported by two other states, has asked that Betts v. Brady be left intact. Twenty-two states, as friends of the court, argue that Betts was "an anachronism when handed down" and that it should now be overruled. We agree.

The judgment is reversed and the cause is remanded to the Supreme Court of Florida for further action not inconsistent with this opinion.

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